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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-886]

Polyethylene Retail Carrier Bags from the People's Republic of China: Initiation of Anticircumvention Inquiry on Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: [Insert date of publication in the *Federal Register*.]

SUMMARY: In response to a request from The Polyethylene Retail Carrier Bag Committee and its individual members: PCL Packaging, Inc., Hilex Poly Co., LLC, Superbag Corp., and Inteplast Group, Ltd., (collectively, the petitioners), the Department of Commerce (the Department) is initiating an anticircumvention inquiry pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act), to determine whether imports of unfinished polyethylene retail carrier bags (PRCBs) from the People's Republic of China (PRC) are circumventing the antidumping duty order on PRCBs from the PRC.¹

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¹ See *Antidumping Duty Order: Polyethylene Retail Carrier Bags From the People's Republic of China*, 69 FR 48201 (August 9, 2004) (*PRCB Order*).

SUPPLEMENTARY INFORMATION:

Background

The Department received from U.S. Customs and Border Protection (CBP) a sample of merchandise that was part of a larger shipment imported into the United States and that resembles an unfinished PRCB. The sample resembles an in-scope, finished PRCB in all respects except that it is sealed on all four sides and appears ready to undergo the final processing step of die-cutting the unfinished PRCB, which will create the opening and the handles of the finished PRCB.² On August 29, 2012, the Department placed a memorandum onto the record stating that it received this sample unfinished PRCB along with proprietary documentation associated with the shipment and invited parties to view the sample and submit comments.

On March 15, 2013, the petitioners requested that the Department issue an affirmative anticircumvention determination (the petitioners' Request), pursuant to section 781(a) of the Act and 19 CFR 351.225(g). Specifically, the petitioners stated that CBP officials advised them that some importers have been entering merchandise described by the CBP officials as unfinished "t-shirt" style PRCBs. The petitioners explain that CBP officials conveyed that the unfinished PRCBs are sealed on all four sides and lack handles when entered into the United States, but that they are clearly intended for use as finished PRCBs. Furthermore, they explained that the CBP officials advised the petitioners that the practice of importing unfinished PRCBs is increasing and expanding to multiple ports. The petitioners further assert that there is no commercial

² This particular CBP sample measures roughly 19 inches by 11.5 inches; the front surface includes red print that reads "THANK YOU" six times; it contains the number "2" within the recycling symbol in the bottom left area; the product displays the caution, "WARNING: TO AVOID DANGER OF SUFFOCATION. KEEP THIS PLASTIC BAG AWAY FROM BABIES AND CHILDREN. DO NOT USE THIS BAG IN CRIBS, BEDS. CARRIAGES OR PLAYPENS." The merchandise also includes the text, "PLEASE RETURN TO A PARTICIPATING STORE FOR RECYCLING." There are two holes near the top border of the CBP sample.

justification for not completing the PRCB production process at the place of manufacture and instead locating the final minor finishing operation in the United States except to evade imposition of antidumping duties.

Scope of the Order

The merchandise subject to the antidumping duty order is PRCBs which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm). PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash-can liners. Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading also covers products that are outside the scope of the order. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Scope of the Anticircumvention Inquiry

This anticircumvention inquiry covers merchandise from the PRC that appears to be an unfinished PRCB which is sealed on all four sides, cut to length, and which appears ready to undergo the final step in the production process, *i.e.*, to use a die press to stamp out the opening and create the handles of a finished PRCB. The unfinished PRCBs subject to this inquiry may or may not have printing and may be of different dimensions as long as they meet the description of the scope of the order.

The Petitioners' Request for Initiation of Anticircumvention Proceeding

As stated above, the petitioners filed a request for a circumvention determination, in which they commented on the relationship of this merchandise to merchandise covered by the scope of the *PRCB Order*. The petitioners allege that the product is intended to be a finished PRCB and is dedicated to PRCB use, as it has gone through every stage of the production process except for the final die cut operation.³ According to the petitioners, the number “2” in the recycling symbol indicates that the product is made out of polyethylene.⁴ The petitioners also allege that the two holes near the top of the unfinished PRCBs are alignment holes that allow the merchandise to be slipped over pins to ensure that the stack of unfinished PRCBs is properly positioned for the die-cutting operation that opens the top and creates the handles of the finished PRCB. The petitioners explain that, once aligned, a simple press is used to cut the stack of unfinished PRCBs to create finished PRCBs that are ready for use.⁵

Citing the International Trade Commission (ITC)'s recent sunset review determination of PRCBs from the PRC, the petitioners explain that the PRCB production process can be described

³ See The petitioners' Request at 7.

⁴ See The petitioners' Request at 7, referencing “The American Chemistry Council Plastic Packaging Resin Codes,” provided at Exhibit 9 of the petitioners' Request.

⁵ See The petitioners' Request at 7.

as a four-step process consisting of (1) blending polyethylene resin pellets, color concentrates, and other additives; (2) extrusion and film forming; (3) printing; and (4) PRCB conversion.⁶ The final step in the conversion process for die-cut PRCBs, such as t-shirt bags, involves the use of an automated die and press at the end of an integrated PRCB conversion line to cut the film, which serves the dual purpose of opening the top of the PRCB and creating the PRCB handles, at which point the merchandise is ready for inspection, packing, and shipment.⁷ For the unfinished PRCBs subject to this circumvention inquiry, the product is taken off-line prior to completion of this final step, which the petitioners allege is subsequently performed after importation into the United States.⁸ Additionally, the petitioners continue, no material is added to complete the finished PRCBs, but rather the scrap film is typically removed for recycling.⁹

INITIATION OF ANTICIRCUMVENTION PROCEEDING

Applicable Statute

Section 781(a) of the Act and 19 CFR 351.225(g) provide that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is completed or assembled in the United States. In conducting anticircumvention inquiries under section 781(a)(1) of the Act, the Department relies upon the following criteria: (A) merchandise sold in the United States is of the same class or kind as any other merchandise that is produced in a foreign country that is subject to an antidumping duty order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which the antidumping duty order applies; (C) the process of assembly or completion in the United States is minor or insignificant;

⁶ See The petitioners' Request at 4, citing *Polyethylene Retail Carrier Bags from China, Malaysia, and Thailand*, Inv. Nos. 731-TA-1043-1045 (Review), USITC Pub. 4160 (June 2010) at I-17.

⁷ See The petitioners' Request at 6.

⁸ *Id.*

⁹ *Id.*

and (D) the value of the parts or components referred to in (B) is a significant portion of the total value of the merchandise. As discussed below, the petitioners presented evidence with respect to these criteria.

A. Merchandise of the Same Class or Kind

The petitioners state that the unfinished PRCB sold in the United States is of the same class or kind as subject merchandise, as it is dedicated as a generic “Thank You” t-shirt bag and only requires a simple die-cutting to become proto-typical subject merchandise.¹⁰ The petitioners assert that the script on the merchandise identifies the product twice as a “bag” and states that it should be returned to the participating store for recycling, indicating it is used by retail establishments.¹¹ Petitioners also assert that the merchandise is made of polyethylene film, as indicated by the “2” in the recycle triangle, and that it falls within the dimensions of in-scope merchandise.¹² For these reasons, the petitioners argue, it is completely and exclusively intended for use as a finished PRCB once it undergoes the final “bag conversion” step of the production process and, therefore, is of the same class or kind as subject merchandise.

B. Completion of Merchandise in the United States

The petitioners assert that the unfinished PRCBs are imported from the PRC and CBP officials described the product as only needing to undergo the final die-cutting operation to open the top and create the handles of finished PRCBs, which means that no materials are added in the United States.¹³ Rather, the merchandise as entered has all the necessary raw materials for a

¹⁰ See The petitioners’ Request at 10.

¹¹ *Id.*

¹² *Id.*

¹³ See The petitioners’ Request at 11.

finished PRCB. Performing the final die-cutting operation in the United States simply removes the material to finish the PRCB.¹⁴

C. Minor or Insignificant Process

According to the petitioners, the process of converting this product into a finished PRCB is minor or insignificant.¹⁵ Based on publicly-available information, and their own industry experience, the petitioners argue that an analysis of the relevant statutory factors of section 781(a)(2) of the Act supports their conclusion that the final processing in the United States is “minor or insignificant” as the only operation remaining to transform this unfinished PRCB into subject merchandise is to perform the final die-cutting operation.¹⁶ The petitioners assert that the Statement of Administrative Action (SAA) for the Uruguay Round Agreements Act provides that no single factor will be controlling in determining whether the process of assembly or completion is minor or insignificant, and that the Department will evaluate each of the factors as they exist in the United States depending on the particular factual pattern of each case.¹⁷ These factors include: (1) The level of investment in the United States; (2) the level of research and development in the United States; (3) the nature of the production process in the United States; (4) the extent of production facilities in the United States; and (5) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States.¹⁸

The petitioners argue that the level of investment in the United States is extremely limited. The only equipment needed is a small press and a die for the cut-out. The petitioners

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See The petitioners’ Request at 9, citing SAA, Uruguay Round Agreements Act, H. Doc. 103-316, Vol. 1 (1994) at 893.

¹⁸ See The petitioners’ Request at 9.

assert that dies cost from \$45 to \$65 each and a new press, according to the advertisement provided by the petitioners, can be purchased for around \$7,000.¹⁹ In contrast, the operations performed in the PRC, the petitioners contend, are highly capital-intensive and sophisticated.²⁰

The petitioners argue that no research and development expenditures are required to perform the simple die-cutting operation, as the technically complex research and development activities are performed prior to this stage in the PRC.²¹

Next, the petitioners explain that all production steps, with the exception of the final die-cutting operation, are performed in the PRC and, therefore, the nature of the production process in the United States is minor in scope and elementary in technique, relative to the production process as a whole.²²

The petitioners also state that minor production facilities are required to perform the final die-cutting operation in the United States. Specifically, the operation could be performed in a small single-story room.²³

Finally, the petitioners assert that the value of processing performed in the United States represents a negligible proportion of the value of the merchandise sold in the United States.²⁴ Completion of the PRCB can be performed by a single employee, and the capital and marginal costs of the die-cutting operations in the United States are relatively insignificant in comparison to the manufacturing of the unfinished PRCB performed in the PRC.²⁵ The petitioners further explain that the Department need not collect precise information on the amount of value added in the United States to conclude that the process is minor or insignificant but may rather rely on a

¹⁹ See The petitioners' Request at 12.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ See The petitioners' Request at 13.

²⁴ *Id.*

²⁵ *Id.*

qualitative assessment to draw this conclusion, citing *Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta From Italy: Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 46571 (August 6, 2003), unchanged in *Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003).²⁶

D. Value of Merchandise Produced in the Foreign Country Is a Significant Portion of the Value of the Merchandise Sold in the United States

As stated above, the petitioners contend that the value of the processing performed in the United States represents a minor portion of the value of the completed merchandise, as little value is added by processing in the United States.²⁷ Therefore, because virtually all of the value of the finished PRCB is created in the PRC, the value of the parts or components entered are certainly a significant portion of the total value of merchandise.

E. Factors To Consider in Determining Whether Action Is Necessary

Section 781(a)(3) of the Act identifies additional factors that the Department shall consider in determining whether to include parts or components in an antidumping duty order as part of an anticircumvention inquiry. Of these, the petitioners argue that importation of the circumventing merchandise represents a change in the pattern of trade.²⁸ The petitioners assert that prior to imposition of the *PRCB Order*, no party imported unfinished PRCBs. The petitioners argue that interrupting the production process prior to completion is neither

²⁶ See The petitioners' Request at Footnote 40.

²⁷ See The petitioners' Request at 13.

²⁸ See The petitioners' Request at 14.

economical nor rational, and the only reason not to complete the PRCB in the country of origin is to evade application of antidumping duties upon importation.²⁹

Analysis

Based on our analysis of the petitioners' Request, the Department determines that the criteria under section 781(a) of the Act have been satisfied to warrant an initiation of an anticircumvention inquiry. In accordance with 19 CFR 351.225(f)(1), a notice of the initiation of an anticircumvention inquiry issued under 19 CFR 351.225(e) will include a description of the product that is the subject of the anticircumvention inquiry - in this case, unfinished PRCBs from the PRC - and an explanation of the reasons for the Department's decision to initiate an anticircumvention inquiry, as provided below.

With regard to whether the merchandise sold in the United States is of the same class or kind as the merchandise covered by the antidumping duty order, the petitioners presented information indicating that the merchandise sold in the United States is of the same class or kind as finished PRCBs from the PRC, which are subject to the antidumping duty order.³⁰ We note, however, that there only exists a presumption at this time that the imported merchandise ultimately is sold in the United States after undergoing further processing.

With regard to completion of merchandise in the United States, the petitioners have also presented information to support their contention that the unfinished PRCBs which are presumably further processed and sold in the United States as in-scope merchandise are produced from merchandise imported into the United States from the PRC.³¹

With regard to whether the process of converting this product into a finished PRCB is a "minor or insignificant process," the petitioners addressed the relevant statutory factors with the

²⁹ *Id.*

³⁰ *See* The petitioners' Request at 10-11.

³¹ *See* The petitioners' Request at 11.

best information available to them at the time of their anticircumvention inquiry request.³² The petitioners relied on publicly-available information for this purpose, in addition to their own expertise in the production process. Given that the petitioners do not have access to cost or price data of either the PRC producer or the U.S. importer, the petitioners therefore relied on their own knowledge of the production process to draw their conclusions and demonstrate that, qualitatively, the value of the conversion from an unfinished PRCB to subject merchandise is minor or insignificant.³³

With respect to the value of the merchandise produced in the PRC, the petitioners relied on the information and arguments in the “minor or insignificant process” portion of their anticircumvention request to indicate that the value of the PRC production for unfinished PRCBs is significant relative to the total value of finished PRCBs sold in the United States.³⁴ We find that this information adequately meets the requirements of this factor, as discussed above.

Finally, the petitioners argued that the Department should also consider the pattern of trade as a factor in determining whether to initiate the anticircumvention inquiry. In particular, the petitioners asserted that no party imported unfinished PRCBs that must undergo the final step of the production process to be converted into finished PRCBs prior to the imposition of the *PRCB Order*, as doing so is irrational and uneconomical.³⁵

Based on our analysis of the information in the petitioners’ submission, we find that the petitioners provided sufficient evidence for each of the criteria enumerated in the statute to initiate an anticircumvention inquiry.

³² See The petitioners’ Request at 11-13.

³³ *Id.*

³⁴ See The petitioners’ Request at 13.

³⁵ See The petitioners’ Request at 14.

Accordingly, we are initiating an anticircumvention inquiry concerning the antidumping duty order on PRCBs from the PRC, pursuant to section 781(a) of the Act and 19 CFR 351.225(g). The Department is initiating this circumvention proceeding with respect to all such unfinished PRCBs received by CBP from the PRC as described above, regardless of producer or exporter. In accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct CBP to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry. In accordance with section 781(e)(1) of the Act and 19 CFR 351.225(f)(7)(i)(C), we intend to notify the ITC in the event of an affirmative preliminary determination of circumvention under section 781(d) of the Act.

This notice serves as an invitation to interested parties to participate in this anticircumvention inquiry. The Department invites all potential respondents to identify themselves as producers of such merchandise, and provide their own evidence and information that may inform the Department's determination. Please contact the official listed under the above heading, "FOR FURTHER INFORMATION CONTACT" for instructions for participating in this segment of the proceeding. The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation consistent with section 781(f) of the Act.

This notice is published in accordance with 781(a) of the Act and 19 CFR 351.225(f).

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

__May 7, 2013_____
(Date)

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